

48A C.J.S. Judges § 319

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

2. Mode and Sufficiency of Raising Objection

a. General Considerations

§ 319. Notice of disqualification application

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

In connection with a petition, application, or affidavit for disqualification of a judge, compliance must be had with requirements as to notice to the other party to the cause and to the judge.

Ordinarily, notice of the application to disqualify should be given to the other party to the cause,¹ but it has been held that an affidavit filed as prescribed by statute is effective although not served on the other party.² Failure to comply with a statutory requirement of notice does not deprive one of a right to a change of judges where compliance is impossible.³ Where the statutes so require, proper notice of an application to require a judge to recuse himself or herself must be given to the judge.⁴ At the very least, the motion itself should be sufficient to place the court on notice that the movant is seeking a change of judge.⁵

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Footnotes

- 1 Ind.—*State ex rel. Wadsworth v. Mead*, 225 Ind. 123, 73 N.E.2d 53 (1947).
- Mo.—*Matter of Buford*, 577 S.W.2d 809 (Mo. 1979).
- Wis.—*State v. Dickson*, 53 Wis. 2d 532, 193 N.W.2d 17 (1972).

- 2 N.M.—*Rivera v. Hutchings*, 1955-NMSC-049, 59 N.M. 337, 284 P.2d 222 (1955).
- 3 Ind.—*Starr v. City of Gary*, 206 Ind. 196, 188 N.E. 775 (1934).
- 4 Ariz.—*Guberman v. Chatwin*, 19 Ariz. App. 590, 509 P.2d 721 (Div. 1 1973).
- La.—*Shreveport Long Leaf Lumber Co. v. Jones*, 185 La. 30, 168 So. 484 (1936).
- 5 **Single sentence in 21-page motion to reconsider insufficient**
Kan.—*In re Marriage of Hutchison and Wray*, 47 Kan. App. 2d 851, 281 P.3d 1126 (2012).

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